

August 31, 2005

The Honorable Magalie R. Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Re: California Department of Water Resources, Oroville Facilities,  
Project No. 2100

Dear Secretary Salas:

The purpose of this letter is to request that the Commission defer issuance of its public notice asking for agency terms and conditions with respect to the new license for the Oroville Facilities until at least December 1, 2005, in order to allow the California Department of Water Resources ("DWR" or "Licensee") to attempt to achieve settlement on outstanding environmental issues. The Licensee submits this request on behalf of itself and the California Department of Fish and Game, the State Water Resources Control Board, the Department of the Interior, including the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the State Water Contractors, and American Rivers.

On January 26, 2005, DWR filed its application for new license. On February 3, 2005, the Commission issued its "tendering notice" of the filing. Among other things, the tendering notice provided a tentative procedural schedule under which the Commission would issue a notice asking for agency terms and conditions in August 2005. The tendering notice stated that revisions to the schedule will be made as the Commission deems necessary.

As the Commission is aware, DWR's application was prepared using the Commission's alternative licensing procedures ("ALP"). 18 C.F.R. § 4.34(i). Pursuant to the ALP, DWR has been engaged in intensive settlement negotiations since April 2004. These negotiations have resulted in substantial progress and tentative agreements among a broad base of stakeholders on a number of issues, particularly on recreation enhancements. DWR, key state and federal agencies, and others also have been engaged over the last several months in focused technical discussions on a range of environmental issues. Considerable progress has been made in narrowing the differences among the

parties as a result of these technical discussions, but the parties have not yet brought these issues to closure. As a result, DWR and the other parties named above have each committed to devoting the necessary resources over the next 90 days, including the participation of policy level representatives of DWR and the other state and federal agencies, to attempt to achieve resolution of the outstanding environmental issues.

DWR and the other named parties believe this is achievable, but will not be possible if the Commission issues its notice asking for agency terms and conditions during the time in which parties are attempting to complete negotiations. The agencies have informed DWR that they would be forced to discontinue negotiations in order to prepare their terms and conditions. DWR, in turn, will have to focus its resources on preparing a response to the anticipated agency terms and conditions and in preparing final amendments to its application, which the tendering notice stated would be due within 30 days from issuance of the notice asking for agency terms and conditions. Settlement negotiations could resume later, of course, but valuable time and a critical opportunity would have been lost. Moreover, in the event of settlement, the Commission would have wasted its time and resources analyzing agency conditions that could well be superseded by the settlement.

For these reasons, DWR and the above named parties respectfully ask the Commission to extend the date for issuance of the public notice requesting agency terms and conditions until at least December 1, 2005. Assuming the Commission issued the notice on that date, agency terms and conditions would be due 60 days later, or January 30, 2006. Alternatively, the Commission could issue its notice sooner but allow an extended period for filing of the terms and conditions, i.e., until January 30, 2006, and extend DWR's deadline for filing final amendments to its application and reply comments to the terms and conditions accordingly. These changes to the tentative procedural schedule should still allow the Commission to meet its target for new license issuance of January 2007 – indeed, if the parties are successful in achieving settlement, as they anticipate, the Commission's preparation of its NEPA document will be greatly simplified.

DWR is not asking the Commission to defer acceptance of its application. It is unclear from the tendering notice, however, once the application has been accepted, whether the Commission intends to solicit motions to intervene and comments on the application in a public notice separate from the notice asking for agency terms and conditions, or whether interventions and comments would be solicited in the same public notice. DWR and the above named parties would prefer that the Commission delay the solicitation of comments and interventions to coincide with its solicitation of agency terms and conditions, since preparation of comments, interventions, and DWR's reply comments also would divert the parties' resources from settlement negotiations. Coordination of filing deadlines for comments, interventions, and agency terms and conditions is consistent with the Commission's rules. 18 C.F.R. § 4.34(b).

Thank you for consideration of this request.

Respectfully submitted,

/s/Michael A. Swiger

Michael A. Swiger

Counsel for California Department  
of Water Resources

cc: James Fargo  
Liz Molloy  
Service List

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington D.C. this 31st day of August, 2005.

/s/Michael A. Swiger \_\_\_\_\_  
Michael A. Swiger  
Van Ness Feldman, P.C.  
1050 Thomas Jefferson, Street, NW  
Seventh Floor  
Washington, D.C. 20007  
Phone: (202) 298-1800  
Fax: (202) 338-2416